Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

ROGER MILLER AND RUTH MILLER,
Petitioners,

v.

LAWRENCE SILVER AND SILVER & FIELD,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When parties to an arbitration agreement governed by the Federal Arbitration Act ("FAA") are directed by a state court to arbitrate their dispute and do so, may the losing party later use the All Writs Act, 28 U.S.C. § 1651(a), to launch a collateral attack on the arbitrator's award in federal court, instead of challenging the award pursuant to the FAA or state law?

2. Does this Court's holding in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999)—that a federal court must follow traditional principles of equity—apply only to injunctions under Fed. R. Civ. P. 65, and not to an injunction issued under the All Writs Act "to effectuate and prevent the frustration of orders [the court] has previously issued," *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977)?

3. May a federal court, merely by retaining exclusive jurisdiction to interpret a class action settlement, thereby acquire exclusive jurisdiction over any state-law dispute between a class member and a third party, as long as the third party contends that damages sought by the class member duplicate damages previously received under the settlement?

LIST OF PARTIES

Petitioners Roger Miller and Ruth Miller, who had been members of a plaintiffs' settlement class certified by the District Court, opposed respondents' motion in the District Court to enjoin enforcement of the arbitration award they had won in California, and were appellants and cross-appellees in the Court of Appeals. Respondents Lawrence Silver and Silver & Field were movants in the District Court and appellees and cross-appellants in the Court of Appeals.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Roger Miller and Ruth Miller pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on January 17, 2003.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 315 F.3d 417 and is reproduced at Appendix ("A.") 1a. The order of the District Court is reported at 162 F. Supp. 2d 387 and is reproduced at A. 48a.

JURISDICTION

The order of the District Court was entered August 24, 2001. The judgment of the Court of Appeals was entered January 17, 2003, and a timely petition for rehearing was denied February 14, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), is reproduced at A. 99a. Pertinent provisions of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, and Title 9 of the California Code of Civil Procedure are reproduced at A. 100a and A. 104a, respectively.

STATEMENT

A. Silver's Representation of the Millers in California State Court.

In 1986, the Millers purchased a Honda dealership in California. A. 20a. As respondents Lawrence Silver and Silver & Field (hereafter collectively "Silver") later admitted, the Millers "overpaid," because "[u]nbeknownst to the Millers," the sellers' success stemmed from "the favored treatment they received as a result of bribes" to Honda executives. C.A. App. 1476.

After a nationwide bribery scheme involving Honda came to light in 1994, the Millers retained Silver as counsel. A. 20a. On behalf of other clients, Silver brought RICO claims against Honda in federal court and specifically pleaded a causal connection between the bribery scheme and the clients' injuries. A. 53a; C.A. App. 1077-78. But he brought the Millers' claims against Honda in California state court and did not specifically plead such a connection. *Id.* 796-805. The state court thereafter dismissed the Millers' RICO claim and ordered them to exhaust their state-law claims before an administrative agency. *Id.* 596-97.[1]

After disagreements arose, Silver withdrew as the Millers' counsel. A. 21a. In March 1997, the Millers sued Silver in California state court, alleging legal malpractice in the handling of their state-court action against Honda. *Id.* 23a. The Millers then agreed to dismiss the malpractice suit without prejudice, in return for Silver's agreement to toll the statute of limitations. *Id.*

B. The Class Action.

The Millers' new counsel voluntarily dismissed their state-court action against Honda and sued Honda in federal court. *Id.* 21a-22a. By then, all federal actions against Honda, including a class action, had been ordered transferred to the District of Maryland for multi-district litigation ("MDL") proceedings. *Id.* 22a. The court had already denied motions to dismiss RICO claims against Honda, *id.* 54a; but after the

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[1] An appellate court later set aside the exhaustion ruling, but it allowed the trial court to decide whether to refer the Millers' claims to the same agency under the doctrine of primary jurisdiction. *Miller v. Superior Court*, 58 Cal. Rptr. 584 (Ct. App. 1996). The Millers voluntarily dismissed their state-court action against Honda before the trial court decided whether to again send the Millers to the agency but this time rely on the doctrine of primary jurisdiction. A. 21a.

transfer of the Millers' suit, Honda moved to dismiss their complaint, contending that the voluntary dismissal in state court precluded a later action based on the same claims. *Id.*

With Honda's motion still pending, the class action was settled. *Id.* 50a. Payments to class members were determined by an "estimate[] [of] the number of cars diverted from each Class member" by the bribery scheme, without regard to any overpayment by a class member in buying a dealership from a bribe-paying dealer. C.A. App. 547. At a hearing, the District Court made clear its intention to approve the settlement (which it later did, A. 51a), even though the damages formula provided no compensation for special injuries apart from those caused by the diversion of vehicles from class members. *See* Tr. of Sept. 28, 1998, at 92, 272. With Honda's motion to dismiss their action still pending, the Millers faced the possibility of obtaining nothing if they opted out of the class, and therefore they did not do so. C.A. App. 1630. The class settlement agreement, which provided that it was to be interpreted in accordance with California substantive law, broadly released claims against the settling defendants, including any claims related to payments by a Honda dealership to a Honda employee. *Id.* 524, 527-29. But although the release protected some parties besides the settling defendants, it did not encompass claims for legal malpractice against class members' former attorneys based on services performed in state court. *Id.* 527-29.

C. Silver's Claim to Part of the Millers' Settlement Share.

After the settlement, Silver filed a "Notice of Lien" in the MDL action, claiming a right to part of the Millers' settlement share because of his work on their behalf in state court. A. 24a. The Millers moved to strike the Notice, contending that under California law an attorney's lien may be established only in an independent action, and that because the dispute regarding the lien would raise only questions of

state law, the District Court lacked jurisdiction (the Millers and Silver are all California citizens, *id.* 19a). C.A. App. 556-73.

While the Millers' motion to strike was pending, and with the agreement to toll the statute of limitations about to expire, the Millers again sued Silver in California state court (the Superior Court of Orange County). A. 24a. The Millers acknowledged they had mitigated their damages through the class action, but alleged they would have recovered $7 million more but for Silver's malpractice in their state-court action against Honda. C.A. App. 879. Although Silver provided the District Court with a copy of the Millers' complaint, *id.* 865-887, he did not move the court to take jurisdiction over the Millers' claim. *Id.* 605-35, 865-66; *see also id.* 923-25.

The District Court ruled that it lacked jurisdiction to decide the merits of the lien. A. 66a-68a. The court nevertheless refused to strike the notice of lien, but ruled that any further effort to enforce the lien would have to be decided in state court. *Id.* 70a.

D. The Arbitration.

In the malpractice suit in California state court, Silver then moved to compel arbitration, citing a clause in his retainer agreement. *Id.* 25a. The state court granted Silver's motion and ordered the parties to submit the malpractice claim to arbitration. *Id.* The arbitrator was Richard J. Beacom, a former Presiding Judge of the Orange County Superior Court. C. A. App. 1498. The parties presented fifteen days of testimony, followed by lengthy written closing arguments and rebuttals. *Id.* 1007-1195; A. 51a. Just as Silver had not asked the District Court to exercise jurisdiction over the malpractice claim, and had not asked the state court to

withhold any issues from the arbitrator, in the arbitration Silver again did not challenge jurisdiction. *Id.* 1007-71, 1118-39.[2]

The arbitrator awarded the Millers nothing for misallocation of cars while they owned their dealership, but awarded $7,475,000 in "blue sky damages" they should have recovered from Honda because they had overpaid for goodwill when they purchased the dealership. A. 52a. The arbitrator noted that they had not been compensated for that loss in the class action. C.A. App. 979.[3] He also awarded $476,000 for malpractice in handling the Millers' claims against other parties to their state-court action and $871,000 in attorney's fees. *Id.* 52a. Finally, he awarded Silver nothing on his cross-complaint for legal fees. *Id.*

E. Silver's Collateral Attack on the Arbitration Award.

Instead of filing a timely motion to vacate the award under the FAA or California's statute governing judicial review of arbitration awards, Silver moved the District Court in Maryland to enjoin the Millers from enforcing the award, which he claimed "undercut[ ]" the class action settlement.

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[2] One of Silver's exhibits in the arbitration was a 1998 letter to the Millers from their then-counsel in the class action. C.A. App. 1290-1300. Their counsel had asserted that, in negotiating the Millers' settlement share with counsel for the class, they had been able to obtain an extra year of cars (for the year before the Millers closed on their dealership purchase), or $1.6 million. *Id.* 1295. In urging the Millers to settle and not opt out of the class, the Millers' counsel claimed that if class counsel looked into the matter in depth, they would realize that they had allocated the Millers an extra year of cars to which they otherwise would not be entitled. *Id.*

[3] Silver's colleague, Mark Field, had admitted in the arbitration that class members who had purchased from bribe-paying dealers had been given no extra consideration in the settlement. C.A. App. 1717-18.

C.A. App. 961[4] He contended—for the first time—that the arbitrator had usurped the District Court's exclusive jurisdiction (which it had retained in its order approving the settlement) over "implementation, interpretation and enforcement of the Settlement Agreement." *Id.* 971-75. Silver did not attempt to establish any of the grounds for vacating an arbitration award specified in the FAA or state law; indeed, he urged the District Court to intervene in part because under California law "[t]he award may not be overturned by the Superior Court except upon a showing that it was procured by means of fraud, corruption, or undue means . . . ." *Id.* 961.

Despite the Millers' objection that Silver's challenge to the arbitration award was improper, the District Court ruled that it had "jurisdiction and authority under the All Writs Act" to enjoin the Millers from enforcing the $7,475,000 award of blue sky damages. A. 62a.[5] In issuing its injunction, the court did not consider whether Silver could demonstrate any recognized basis for vacating an arbitration award under the FAA or California law. Nor did it address traditional principles of equitable relief.

Instead, after identifying "five flaws in the Millers' [malpractice] theory," *id.* 53a; *see also id.* 53a-58a, the court, which did not have before it the testimony or exhibits in the arbitration, pointed to facts purportedly justifying resort to the All Writs Act. *Id.* 60a-62a. In the court's view, "the Millers made arguments before the arbitrator about the Honda-related

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[4] Although Silver never represented the Millers in the MDL proceedings, he had extensively participated in those proceedings on behalf of other clients and had been named by the District Court as a member of the Plaintiffs' Executive Committee. C.A. App. 1478-79.

[5] The court also barred the Millers from enforcing the award of attorney's fees, although it said that it would "permit" the Millers to ask the court to determine the fees incurred in pursuing their claim for blue sky damages, and that it would then modify the injunction to allow the Millers to enforce the remainder of the supplemental award. A. 62a.

litigation that were so totally without merit that they can only be characterized as untrue." *Id.* 61a. Although the court said it "recognize[d] that an arbitration award may not be vacated except under extremely narrow circumstances," it reasoned that "the cases reciting this rule ordinarily arise where a party is seeking to vacate an award based upon an alleged error intrinsic in the arbitration proceeding itself." *Id.* 59a-60a. The court deemed those cases inapplicable because, although "the arbitrator erred in his apparent findings," it was "enjoining the award he entered not because of any mistake he made but because the Millers had no right to make before him the deceptive arguments they did, misrepresenting what had occurred during the Honda bribery litigation." *Id.* 60a. The court further criticized the arguments the Millers had made in moving to strike Silver's Notice of Lien. The court faulted the Millers for "misrepresent[ing] that issues of state law would predominate in resolution of the dispute," and "not disclos[ing] that . . . [their] legal malpractice theory . . . would require an intimate knowledge of the legal issues involved in the Honda MDL proceedings" because it would distinguish blue sky damages from the allocation damages they had received in the class action settlement. *Id.* 61a. The court opined that "[r]esolution of that issue involved interpretation of the MDL settlement agreement and, as the Millers knew, the settlement agreement conferred exclusive jurisdiction upon this court to interpret its terms." *Id.*[6]

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[6] Despite Silver's reliance in the arbitration on the letter which had asserted that the Millers' settlement share included $1.6 million for misallocation of vehicles in the year before their purchase, C.A. App. 987-89, 1067, 1124-25, the District Court also accused the Millers of "withh[o]ld[ing] from the arbitrator that they received $1 million for 250 cars apportioned to them before they purchased their dealership." A. 61a. The $1 million figure came from Silver's counsel, who had told the court that the Millers' former counsel "were in error" in their 1998 letter, C.A.

F. The Decision of the Court of Appeals.

The Millers appealed, contending, *inter alia*, that arbitration awards may not be collaterally attacked but instead must be challenged consistently with the procedures and grounds for relief specified in the FAA and state arbitration statutes; that under *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), a federal court's power under the All Writs Act is defined by traditional principles of equity, which the District Court had failed to apply in issuing the injunction; and that the All Writs Act does not apply because another statute, the California arbitration statute, specifically addresses review of the award in the arbitration ordered by the California court. C.A. Appellants' Opening Br. 28-33. A divided panel of the Fourth Circuit[7] affirmed the injunction. A. 1a.

The majority held that the injunction was proper because the All Writs Act, as construed in *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977), permits the issuance of "such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." A. 33a-34a. The majority did not apply traditional principles of equitable relief or consider whether Silver had established any of the grounds for vacating an arbitration award recognized by California law or the FAA.

The majority acknowledged that the District Court had "identifie[d] several issues regarding the merits of the Millers' malpractice claim about which the District Court

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App. 1605, but that class counsel had said that "it appeared that the Millers had received approximately $1 million" too much. Attachment to C.A. Appellees' Opening Br., at 2.

[7] Hamilton, Senior Circuit Judge, joined by Hilton, Chief United States District Judge for the Eastern District of Virginia; Circuit Judge Traxler dissented.

disagreed with the arbitrator's resolution." A. 33a. But it read the District Court's opinion as relying upon only one of those issues in entering the injunction, namely, "the nature of the damages" the Millers had been awarded under the class action settlement. *Id.* Reliance upon that point of disagreement with the arbitrator was proper, the majority reasoned, because the Millers' attempt to recover blue sky damages "raised an interpretive question" under the class action settlement agreement, and the District Court had "exclusive jurisdiction to resolve such interpretative question." *Id.* 35a. The injunction was therefore "necessary to prevent direct frustration" of the order approving the settlement. *Id.* 36a. The majority also described the injunction as "necessary to cure the injustices created by the Millers through their abuse of the MDL process." *Id.*[8]

Judge Traxler dissented. Noting this Court's admonition in *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377 (1994), that "[f]ederal courts . . . possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree," A. 46a-47a, Judge Traxler "emphasize[d] that the proper analytical focus is on whether the injunction qualified as an exercise of power 'in aid of' jurisdiction under the [All Writs Act], as opposed to whether and to what extent the settlement order purported to retain jurisdiction over matters related to the MDL litigation." *Id.* 46a. Judge Traxler also explained why he did not read *New York Telephone* to authorize enjoining enforcement of an award returned in an arbitration about alleged malpractice in state-court litigation:

> Because Silver did not participate in the MDL proceedings as either a litigant or as counsel for the

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[8] The majority addressed the All Writs Act in just five paragraphs and chose to devote most of its opinion to a subsidiary issue raised by the Millers, whether the injunction violated the Anti-Injunction Act, 28 U.S.C. § 2283. A. 36a-41a; C.A. Appellants' Opening Br. 49-53.

> Millers, the dispute between Silver and the Millers is not directly before the district court and does not threaten its settlement order in the same way as would a post-settlement dispute between the Millers and their MDL counsel or the Millers and Honda. . . .
>
> . . . .
>
> With respect, I cannot conclude that the arbitration award, arising from a California state malpractice action, threatened the integrity of the district court's order. The Millers are not attempting to recover, directly or indirectly, any additional damages from Honda. They are not relitigating any of their claims against Honda that were resolved in the MDL litigation or otherwise collaterally attacking the district court's settlement order. The Millers's claims in arbitration involved the completely distinct legal issue of whether, under California law, Silver committed malpractice in a prior state action that was never before the district court.

A. 45a-46a.

REASONS FOR GRANTING THE WRIT

This case raises important questions about the permissibility of collateral attacks on arbitration awards and about the power conferred on federal courts by the All Writs Act. In reliance upon that Act, the Court of Appeals upheld an extraordinary injunction, which remains in place today, against enforcement of an award duly returned by an unbiased arbitrator in an arbitration ordered by a state court—on the motion of the very parties who later sought the injunction. The injunction was issued and upheld without regard to the provisions of either the FAA or California's statute governing review of arbitration awards, and without regard to traditional principles of equitable relief.

I. THE CIRCUITS ARE SPLIT ON WHETHER ARBITRATION AWARDS MAY BE COLLATERALLY ATTACKED.

The Circuits are divided as to whether arbitration awards governed by the FAA must be challenged, if at all, under the FAA or the applicable state arbitration statute. Four Circuits have held that the judicial-review procedures and standards established by the FAA and state arbitration statutes are the exclusive means of challenging an arbitration award. With the decision of the Court of Appeals in this case, two Circuits have now permitted federal district courts to entertain requests for relief that bypass those established procedures and standards in favor of a collateral attack.

A. The Majority of Circuits To Address the Question Have Held That Arbitration Awards Are Not Subject to Collateral Attack.

The Sixth, Seventh, Ninth, and Tenth Circuits have all held that awards in arbitrations subject to the FAA may not be collaterally attacked:

—The Sixth Circuit has concluded that arbitration awards are not subject to collateral attack. In *Corey v. New York Stock Exchange*, 691 F.2d 1205 (6th Cir. 1982), it held that summary judgment was properly granted against an investor who, after losing an arbitration sponsored by the New York Stock Exchange, sued the Exchange over the procedures followed in the arbitration, instead of seeking review under the FAA. The Sixth Circuit ruled that the suit was "an impermissible collateral attack on the award." *Id.* at 1212.

> The [FAA] provides the exclusive remedy for challenging an award on the grounds raised by Corey. . . . Once an arbitrator has rendered a decision the award is binding on the parties unless they challenge the underlying contract to arbitrate pursuant to section 2 or avail themselves of the review provisions of

> sections 10 and 11. . . . [T]he [FAA] provides no other avenue by which an arbitration award may be challenged.

Id.; *accord Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 910 (6th Cir. 2000).

—The Seventh Circuit has held that a claim of misconduct in arbitration proceedings could be raised only under § 10 of the FAA, 9 U.S.C. § 10, and could not be presented through a complaint seeking termination of an ongoing arbitration proceeding. *See Tamari v. Bache & Co. (Lebanon) S. A. L*, 565 F.2d 1194, 1202 (7th Cir. 1977); *accord Prudential Sec. Inc. v. Hornsby*, 865 F. Supp. 447, 450 (N.D. Ill. 1994).

—The Ninth Circuit "has been extremely unwilling to upset the streamlined nature of arbitration by permitting the launching of collateral attacks." *Sander v. Weyerhaeuser Co.*, 966 F.2d 501, 503 (9th Cir. 1992). In *Sander*, it directed the entry of summary judgment against a plaintiff who "use[d] the guise of an independent suit" to press his contention that an arbitration award had been procured by fraud. *Id.* In *LaFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334 (9th Cir. 1986), it refused to permit a party to "collaterally attack" an arbitration award "under the guise of a motion [under Fed. R. Civ. P. 60(b)] to set aside the judgment confirming the award." 791 F.2d at 1339. "The [FAA] provides the exclusive grounds for challenging an arbitration award within its purview." *Id.* at 1338.

—The Tenth Circuit has held that the FAA "provides the exclusive remedy for challenging conduct that taints an arbitration award within the Act's coverage. . . . When, as here, a suit is in substance no more than a collateral attack on the award itself, it is governed by the provisions of the Act." *Foster v. Turley*, 808 F.2d 38, 41-42 (10th Cir. 1986).[9]

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[9] *Accord Pisciotta v. Shearson Lehman Bros.*, 629 A.2d 520, 523-24 (D.C. 1993); *Phillips Petroleum Co. v. Arco Alaska, Inc.*, Civ. A. 7177, 1988 WL 60380, *5-*6 (Del. Ch. June 14, 1988).

Under these decisions, Silver should have sought review pursuant to the California statute governing review of arbitration awards. Although the FAA applied because the retainer agreement between the Millers and Silver evidenced a transaction involving interstate commerce,[10] the proper vehicle for obtaining judicial review of the award was a petition to vacate filed in a California court pursuant to Cal. Civ. Proc. Code § 1286.2 (West Supp. 2003). State court was the proper forum because the FAA does not independently confer federal jurisdiction, *see Southland Corp. v. Keating*, 465 U.S. 1, 15 n.9 (1984), and the arbitration involved state-law claims between citizens of the same state. A. 19a. The grounds for vacating an arbitrator's award specified in the California statute are similar to those set forth in the FAA. *Compare* Cal. Civ. Proc. Code § 1286.2 *with* 9 U.S.C. § 10(a).[11] Even assuming that the District Court could have exercised supplemental jurisdiction over a motion to vacate filed under the FAA, the court would have been confined to the grounds for review specified in the FAA and the case law interpreting it.

B. The Second and Fourth Circuits Permit Collateral Attacks on Arbitration Awards.

In contrast, the Second and Fourth Circuits have permitted parties unhappy with an arbitrator's award to pursue what is in substance a collateral attack on the award.

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[10] *See* 9 U.S.C. § 2; *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995) (holding that § 2 "signals an intent to exercise Congress' commerce power to the full").

[11] After the District Court had issued its injunction against enforcement of the awards of blue sky damages and attorney's fees, Silver ultimately did pursue a direct attack on the entire arbitration award, by filing a petition to vacate in state court. The petition was dismissed, however, because it was filed long after the 100-day time limit established by California law. *See Miller v. Silver*, No. G030054, 2003 WL 264758 (Cal. Ct. App. Feb. 10, 2003) (affirming dismissal).

In *Mian v. Donaldson, Lufkin & Jenrette Securities Corp.*, 7 F.3d 1085 (2d Cir. 1993) (per curiam), the Second Circuit held that the failure of a party who had lost an arbitration "to move to vacate the arbitration award within the time prescribed by 9 U.S.C. § 12 does not prevent him from seeking to recover damages for alleged civil rights violations that occurred during the arbitration proceeding itself." 7 F.3d at 1086-87. The court ruled that the procedures established by the FAA, though "normally the exclusive remedy to challenge the results of an arbitration proceeding," *id.* at 1086, did not preclude a suit under federal civil rights laws for racial discrimination during the arbitration. *Id.* at 1087. "The fact that a major component of the damages sought would consist of the amount of the arbitration award—if the plaintiff can prove that but for the discrimination, the arbitrators would have ruled in his favor—does not mean that Mian's suit is one to challenge the award within the meaning of [the FAA]." *Id.*

Similarly, by allowing Silver to obtain an injunction against enforcement of the California arbitration award on entirely different grounds from those specified in the FAA and California law, the Fourth Circuit allowed a collateral attack on the award.

C. The Decisions Permitting Collateral Attacks Thwart the Central Purpose of Arbitration.

The decisions in two circuits permitting collateral attacks on arbitration awards are misguided. Whatever authority a court may have to prevent an arbitration from going forward, the situation is fundamentally different once an arbitration has been conducted and an award returned.[12] Courts should not

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[12] *Cf. Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 524 (1986) (holding inapplicable cases in which "the prevailing party in the federal action sought an injunction against relitigation in state court as soon as the opposing party commenced the state action," because in *Parsons*

allow end runs around the procedures and grounds for review provided in the FAA and state arbitration statutes. Not only has this Court "generally declined to expand opportunities for collateral attack," *Heck v. Humphrey*, 512 U.S. 477, 485 (1994),[13] but the nature and purpose of arbitration make collateral attacks particularly objectionable.

Collateral attacks on arbitration awards strike at the heart of the bargain that parties make when they agree to arbitrate their disputes. A party who agrees upon arbitration "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985). "[C]ourts must not reexamine the merits of an arbitral award . . . . Because arbitration is an *alternative* to the judicial resolution of disputes, this extremely low standard of review is necessary to prevent the judicialization of the arbitration process." *Sunshine Mining Co. v. United Steelworkers*, 823 F.2d 1289, 1293 (9th Cir. 1987). As this Court admonished in summarily reversing a decision that had overturned an arbitration award,

> [C]ourts . . . have no business weighing the merits of the grievance [or] considering whether there is equity in a particular claim. When the judiciary does so, it usurps a function which . . . is entrusted to the arbitration tribunal.

Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509-10 (2001) (per curiam) (citations & internal quotations omitted) (ellipses & insertion in original).

"respondents chose to fight out the res judicata issue in state court first, and only after losing there did they return to federal court for another try").

[13] *See, e.g., D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482, 486 (1983) (holding that a federal district court could not entertain a constitutional challenge to a denial by the District of Columbia Court of Appeals of a request for waiver of a bar admission rule); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923) (similar holding).

When arbitration awards are reviewed in court pursuant to the FAA and state arbitration statutes, the risk of such impermissible weighing of the merits is minimized by the established—and extremely limited—standard of review. In keeping with the "national policy favoring arbitration," *Southland Corp.*, 465 U.S. at 10, "the standard of review of arbitral awards is among the narrowest known to the law." *Sheldon v. Vermonty*, 269 F.3d 1202, 1206 (10th Cir. 2001) (quotation omitted). But when a court entertains a collateral attack launched without regard to that standard of review, the risk that it will improperly substitute its views for the arbitrator's is far greater.

The present case illustrates the dangers of permitting collateral attacks. Neither the Court of Appeals nor the District Court considered whether Silver could establish any of the grounds for relief available under the FAA or Cal. Civ. Proc. Code §1286.2. Indeed, the Court of Appeals predicated its ruling in part on a determination that directly contradicted a determination made by the arbitrator, contrary to this Court's directive that "courts . . . have no business weighing the merits" of the matter before the arbitrator. *Garvey*, 532 U.S. at 509 (quotation omitted).[14] The District Court observed that "arbitration awards are not sacrosanct and should not be enforced if to do so would violate public policy." A. 60a. But it did not decide whether Silver's objections to the award fit within the narrow bounds of the public-policy exception as construed by this Court. They clearly do not. *See E. Associated Coal Corp. v. UMW of Am., Dist. 17*, 531 U.S. 57, 62-63 (2000). And although both the District Court and the Court of Appeals criticized the Millers for purportedly

[14] The arbitrator had found that the Millers had not received compensation for their blue sky damages under the settlement, A. 26a, but the Court of Appeals found that they had been compensated for such damages. *Id.* 41a.

misleading the arbitrator, neither court considered the demanding standard that must be met to vacate an arbitration award based on fraud.[15]

Congress was not engaging in a mere verbal exercise when it prescribed procedures for challenging arbitration awards and grounds upon which awards could be vacated. It could not have intended that review pursuant to the FAA would be simply an alternative to other vehicles for obtaining federal judicial review of an arbitration award.

Collateral attacks also interfere with settled principles governing judicial *remedies* for errors in an arbitration proceeding. "Even when the arbitrator's award may properly be vacated, the appropriate remedy is to remand the case for further arbitration proceedings." *Garvey*, 532 U.S. at 511. The arbitrator can then correct the error, and the parties can still receive what they bargained for—a resolution of their dispute through arbitration. But a court entertaining a collateral attack is in no position to order a remand to the arbitrator. Here, the District Court simply barred enforcement of the arbitration award, without giving the arbitrator any opportunity to revisit the matter.

A collateral attack on an arbitration award is doubly improper when the arbitration was ordered by a state court, as occurred here. Arbitration is a critical method of resolving

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[15] *See Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 161 F.3d 314, 319 (5th Cir. 1998), *adopting* 978 F. Supp. 266, 304 (S.D. Tex. 1997); *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir. 1992); *Karppinen v. Karl Kiefer Mach. Co.*, 187 F.2d 32, 35 (2d Cir. 1951). Silver could not have met the standard for overturning an award based on fraud, for the subject of the alleged misrepresentations—the nature of the damages awarded under the class action settlement—was one he was fully familiar with from his extensive participation in the class action. *See* note 4, *supra*. Indeed, in the arbitration Silver had called as witnesses no fewer than six attorneys (including himself) who had been involved in the class action. C.A. App. 966-67.

disputes and is relied upon by state judicial systems across the country. A sovereign state's interest in administering its statutory arbitration scheme is entitled to respect and deference; it should not be disregarded by a federal court that disagrees with the arbitrator's award. [16]

D. The Question Is Important.

The permissibility of collateral attacks on arbitration awards is a question of broad importance in light of the judicial system's increased reliance upon arbitration to relieve docket congestion and to provide a speedy means of deciding disputes. In § 2 of the Alternative Dispute Resolution Act of 1998, Pub. L. No. 105-315, 112 Stat. 2993, Congress specifically found that voluntary arbitration and other forms of alternative dispute resolution "may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States." *See also* 28 U.S.C. §§ 651-658. This Court, too, has recognized the valuable role of arbitration, in the Court's many decisions in recent years that have eliminated or narrowed restrictions on its use. The Fourth Circuit's decision threatens to undermine the steps taken by Congress and this Court to promote arbitration. It is completely at odds with the liberal federal policy in favor of arbitration and should be reversed.

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[16] Allowing collateral attacks on arbitration awards also invites forum-shopping. Here, Silver preferred to challenge the arbitration award not in the Superior Court of Orange County, which had ordered the arbitration on Silver's motion, but before the federal judge who had appointed him to the Plaintiffs' Executive Committee in the MDL proceedings and had dealt with him in that capacity.

II. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *GRUPO MEXICANO DE DESARROLLO, S.A. V. ALLIANCE BOND FUND, INC.*

This case also raises a significant issue about the reach of a recent decision of this Court, *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). In *Grupo Mexicano*, this Court ruled that, "[b]ecause such a remedy was historically unavailable from a court of equity," a federal court presiding over an action for money damages has "no authority to issue a preliminary injunction preventing [defendants] from disposing of their assets." *Id.* at 333. More broadly, the Court held that the jurisdiction over suits in equity conferred by the Judiciary Act of 1789 "'is an authority to administer in equity suits *the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.*'" *Id.* at 318 (quoting *Atlas Life Ins. Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939)) (emphasis added). As the Court explained,

> "Substantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789 (1 Stat. 73)."

527 U.S. at 318 (quoting A. DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE 660 (1928)). Accordingly, this Court "ask[ed] . . . whether the relief respondents requested here was traditionally accorded by courts of equity." 527 U.S. at 319.

In the present case, the Court of Appeals ignored *Grupo Mexicano*—apparently because it deemed the District Court's injunction proper under the All Writs Act to "prevent the frustration of orders it has previously issued," *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977), A. 34a,

36a, rather than under Fed. R. Civ. P. 65, the rule relied upon for the injunction in *Grupo Mexicano*. *See* 527 U.S. at 318 & n.3. Had the Court of Appeals deemed *Grupo Mexicano* applicable, as petitioners had argued, it would have been obligated to vacate the injunction. First, in the English Court of Chancery, the absence of an adequate remedy at law was a basic requirement for equitable relief. *See id.* at 319; HENRY L. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY § 21, at 46 (2d ed. 1948). Silver had an adequate remedy at law: review of the arbitration award in state court. Second, equity has long recognized that, "[i]f [the arbitrators] have given their honest, incorrupt judgment on the subject-matters submitted to them, after a full and fair hearing of the parties, they are bound by it; and a court of chancery have no right to annul their award because it thinks it could have made a better." *Burchell v. Marsh*, 58 U.S. (17 How.) 344, 352 (1854).[17] Third, "equity follows the law." *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893); *see Magniac v. Thomson*, 56 U.S. (15 How.) 281, 299 (1853). Established legal principles under the FAA and state law control both the procedure for challenging arbitral decisions and the grounds for such challenges.

Both as a matter of *stare decisis* and as an initial matter, conformity with traditional principles of equity should be required just as much under the All Writs Act as under Rule 65.

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[17] *See also Burchell*, 58 U.S. (17 How.) at 349:

> Arbitrators are judges chosen by the parties to decide the matter submitted to them, finally and without appeal. As a mode of settling disputes it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation.

A. *Grupo Mexicano* Held That the All Writs Act, Like Rule 65, Requires Application of Traditional Principles of Equity.

In *Grupo Mexicano*, the United States, as *amicus curiae*, specifically invoked the All Writs Act in support of the preliminary injunction. *See* 527 U.S. at 326 n.8 ("the United States suggests that there is statutory support for the present injunction in the All Writs Act"). This Court rejected the argument:

> [W]e have said that the power conferred by the predecessor of that provision is defined by "what is the usage, and what are the principles of equity applicable in such a case." *De Beers Consol. Mines, Ltd. v. United States,* 325 U.S. 212, 219 (1945). *That is the very inquiry in which we have engaged.*

527 U.S. at 326 n.8 (emphasis added). The clear import of this passage is that a federal court's equitable power under the All Writs Act, like its equitable power under Rule 65, is confined by traditional principles of equity.

B. The All Writs Act Is Properly Construed To Require Application of Traditional Principles of Equity.

In any event, the All Writs Act can be traced back to the Judiciary Act of 1789—the same Act relied upon by this Court in *Grupo Mexicano* in holding that federal courts must apply established principles of equity. *See* 527 U.S. at 319. The First Congress did not in one section of that Act require federal courts to honor established principles of equity and then, in the section of the same Act that was the predecessor of the All Writs Act, authorize those same courts to disregard those very principles.

Section 11 of the Judiciary Act, the provision referred to by this Court in *Grupo Mexicano* in stating its principal holding about the obligation of federal courts to apply traditional

equitable principles, "conferred on the federal courts jurisdiction over 'all suits . . . in equity.'" *Grupo Mexicano*, 527 U.S. at 318 (quoting 1 Stat. 73, 78) (omission in original). "The All Writs Act originally was codified in § 14 of the Judiciary Act . . . ," *Pennsylvania Bureau of Correction v. United States Marshals Service,* 474 U.S. 34, 40 (1985), which granted the federal courts "power to issue . . . all other writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." 1 Stat. 73, 81-82.[18] It would be unreasonable to conclude that the First Congress intended to bind the federal courts to traditional equitable principles in § 11, but to leave them free to roam at large when issuing injunctions under § 14.

Grupo Mexicano is not the only decision of the Court demonstrating that a federal court's powers under the All Writs Act are limited by the basic principles applied by courts in England in the late eighteenth century. In *Carlisle v. United States,* 517 U.S. 416 (1996), the Court rejected a claim that the All Writs Act allowed a court to enter a judgment of acquittal, through a writ of *coram nobis*, despite noncompliance with the time limits of Fed. R. Crim. P. 33. One of the Court's rationales was that the writ of *coram nobis* "would not have lain here, since it was *traditionally available* only to bring before the court factual errors 'material to the validity and regularity of the legal proceeding itself.'" 517 U.S. at 429 (emphasis added) (quoting *United States v. Mayer*, 235 U.S. 55, 68 (1914)).[19] In *De Beers,* after noting

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[18] Minor changes were made in the 1948 consolidation of two separate provisions into what is now 28 U.S.C. § 1651, but "the 1948 changes in phraseology do not mark a congressional expansion of the powers of federal courts to authorize issuance of any 'appropriate' writ." *Pa. Bureau of Corr.*, 474 U.S. at 42.

[19] *Mayer* discussed the writ of *coram nobis* as employed by "courts of common law." 235 U.S. at 67; *see also id.* at 68 (citing English treastises).

that the Sherman Act "confers no new or different power than those traditionally exercised by courts of equity," 325 U.S. at 219, the Court made clear that that was also true of the All Writs Act. *Id.* And in *Clinton v. Goldsmith*, 526 U.S. 529 (1999), the Court declared that "[t]he All Writs Act invests a court with a power essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law." *Id.* at 537.

C. *New York Telephone* Does Not Permit Federal Courts To Issue Injunctions Under the All Writs Act Without Regard to Established Principles of Equitable Relief.

The Court of Appeals relied upon this Court's statement in *New York Telephone*, 434 U.S. at 172, that the All Writs Act empowers a federal court "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." A. 33a-34a. That statement, however, does not give federal courts *carte blanche* to issue injunctions without consideration of traditional principles of equitable relief.

The question in *New York Telephone* was simply whether a federal court could compel a third party, a telephone company, to assist the FBI, pursuant to a warrant, in installing devices that would register the numbers dialed on certain telephones. The United States had no adequate remedy except for such assistance. "[W]ithout the Company's assistance there is no conceivable way in which the surveillance authorized by the District Court could have been successfully accomplished." 434 U.S. at 175. *New York Telephone* is thus not authority for issuing injunctions without regard to the existence of an adequate remedy at law.

Nor, since it involved a writ that imposed a burden only on the telephone company (which was to be compensated for its efforts, *see id.* at 161), is it authority for issuing injunctions

without regard to the respect due state courts (and arbitrators hearing disputes that state courts have ordered arbitrated). Among the powers not surrendered to the national government but reserved to the States is "the maintenance of state judicial systems for the decision of legal controversies." *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 285 (1970).

> [T]he Constitution . . . recognizes and preserves the autonomy and independence of the States . . . in their judicial departments. Supervision over . . . the judicial action of the States is in no case permissible except as to matters by the Constitution specifically authorized or delegated to the United States. Any interference . . . , except as thus permitted, is an invasion of the authority of the State, and, to that extent, a denial of its independence.

Erie R.R. v. Tompkins, 304 U.S. 64, 78-79 (1938) (quotation omitted). The independence of state courts is essential to our system of federalism and protected by the Tenth Amendment. The states' prerogative to administer their court systems demands that, when an injunction is sought to preclude a petition to a state court to confirm an award in an arbitration ordered by the state court, the request cannot be judged by the same standard applicable to a request for a writ requiring a telephone company to provide technical assistance. "[F]ederal and state courts are complementary systems for administering justice in our Nation. Cooperation and comity, not competition and conflict, are essential to the federal design." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 586 (1999). Adequacy of state-court remedies must be presumed even when the party seeking federal intervention is pressing contentions under the Constitution. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). Surely the adequacy of such remedies also must be presumed when a party is seeking to bar enforcement of an arbitrator's resolution of a state-law claim, based on the party's assertion

about a settlement agreement which only released claims against other parties and provides that its interpretation is governed by state substantive law. C.A. App. 524.

With respect to arbitration awards in particular, the FAA and state arbitration statutes prescribe specific procedures and substantive standards of review. This Court has held that, "'[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling.'" *Syngenta Crop Protection, Inc. v. Henson*, 123 S. Ct. 366, 369 (2002) (quoting *Pa. Bureau of Corr.*, 474 U.S. at 43). The All Writs Act "does not authorize . . . ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate." *Pa. Bureau of Corr.*, 474 U.S. at 43. In *New York Telephone* itself, the Court reasoned that federal courts could act under the All Writs Act "'*[u]nless appropriately confined by Congress.*'" 434 U.S. at 172-73 (emphasis added) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 273 (1942)). The Court should clarify that neither traditional principles of equity, nor the rule that a statute specifically addressing the matter is controlling, can be disregarded merely because an arbitration award, or a state court order, is thought to "frustrate" a prior order of the federal court.

D. The Question Is Important.

Whether federal courts must respect traditional principles of equitable relief, in exercising their equitable power under the All Writs Act, is a significant question of federal law. By its express terms the All Writs Act applies to "all courts established by Act of Congress." The Act may be invoked in all manner of cases, including ordinary civil cases, administrative cases, criminal cases, and bankruptcy cases. Whether federal courts are or are not obligated to apply traditional equitable principles should be definitively resolved.

It is likewise essential to make clear that a federal court's authority under *New York Telephone* to "prevent the frustration of orders it has previously issued," 434 U.S. at 172, is not a license to issue writs without regard to traditional principles of equitable relief or statutory provisions specifically addressing the issue at hand. The Court recently rejected one of the outgrowths of *New York Telephone*—the many lower court decisions that had allowed removal of cases to federal court under the All Writs Act. *See Syngenta*, 123 S. Ct. at 369-70. In his concurring opinion in *Syngenta*, Justice Stevens wrote that "the overly expansive interpretation given to the All Writs Act in *New York Telephone* may produce further mischief," and urged that the decision be overruled. *Id.* at 371; *see also* Georgene Vairo, *Judicial v. Congressional Federalism: The Implications of the New Federalism Decisions on Mass Tort Cases and Other Complex Litigation*, 33 LOY. L.A. L. REV. 1559, 1577 (2000) (observing that *New York Telephone* "set forth a broad construction of the All-Writs Act"). Here, the *New York Telephone* opinion has indeed produced further mischief: an injunction against enforcement of an award in an arbitration that had been ordered by a state court, on the motion of the very parties later seeking the injunction. And there are many other decisions, having nothing to do with removal, in which *New York Telephone* has likewise led to highly suspect interference with state judicial systems.[20] Limiting *New York Telephone* would eliminate a major source of confusion as to the power of the federal courts.

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[20] *See, e.g., In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir. 1985); *In re Columbia/HCA Healthcare Corp.*, 93 F. Supp. 2d 876, 881 (M.D. Tenn. 2000); *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org. of Iran*, 508 F. Supp. 1350, 1358 (N.D. Tex. 1981); *see generally* Vairo, *supra*, at 1578-84.

III. FEDERAL COURTS DO NOT HAVE EXCLUSIVE JURISDICTION OVER DISPUTES BETWEEN SETTLING CLASS MEMBERS AND ANY THIRD PARTY WHO RAISES A DEFENSE OF DOUBLE RECOVERY.

Finally, this Court should review the Fourth Circuit's decision because it confers a broad new authority upon federal courts approving class action settlements. Now, simply by announcing that it is retaining exclusive jurisdiction to interpret and implement the settlement agreement, a federal judge acquires a sweeping power to nullify state-court-ordered arbitrations between class members and third parties—even arbitrations involving state-law claims between citizens of the same state. To invoke that power, the third parties need only contend that the damages awarded by the arbitrator could not have been recovered from parties released in the class action settlement, under a proper interpretation of the settlement agreement. The Fourth Circuit's ruling greatly expands federal judicial authority, for federal courts routinely retain jurisdiction to interpret class action settlement agreements, and classes often have thousands or even tens or hundreds of thousands of members, many of whom may pursue claims against third parties. This enlargement of exclusive federal jurisdiction constitutes a completely unwarranted abrogation of state sovereignty.

Even as to claims arising under *federal* law, exclusive federal jurisdiction is "the exception rather than the rule," *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 507-08 (1962), and is created only when Congress acts to preclude state courts from exercising jurisdiction:

> Under our "system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." To give federal courts exclusive jurisdiction

> over a federal cause of action, *Congress must, in an exercise of its powers under the Supremacy Clause, affirmatively divest state courts of their presumptively concurrent jurisdiction.*

Yellow Freight Sys., Inc. v. Donnelly, 494 U.S. 820, 823 (1990) (emphasis added) (citations omitted) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)).

In this case, however, the Fourth Circuit held that a sovereign state lacked jurisdiction to decide, in its own courts and in an arbitration ordered by one of those courts, a claim under *its own laws*. The Fourth Circuit so held despite the absence of any action by Congress remotely supporting such a divestiture of state-court jurisdiction. And the claim of exclusive federal jurisdiction had never been presented either in state court or before the arbitrator; indeed, it was the party later claiming exclusive federal jurisdiction who had moved to compel arbitration in the first place. The Fourth Circuit's ruling disregards "the autonomy and independence of the States . . . in their judicial departments," *Erie*, 304 U.S. at 78-79 (quotation omitted), and is truly inexplicable.

To the extent that federal courts are entitled to retain exclusive jurisdiction to interpret and implement a class action settlement agreement, such jurisdiction necessarily is limited to such matters as disputes between the parties to the settlement about its meaning, or disputes about whether particular claims were released in the settlement. It has never been thought to give a federal court roving authority to intervene in state-law disputes between class members and third parties about conduct (in the present case, alleged legal malpractice in a state-court action) that did not occur in the class action and was neither at issue in the class action nor addressed in the settlement.

Nor did Silver's argument to the arbitrator, that the Millers had been compensated for overpaying for the dealership when they recovered damages under the class action settlement for

misallocation of vehicles, remotely bring the Millers' state-law malpractice claim within the District Court's exclusive jurisdiction. The arbitrator was fully capable of evaluating Silver's argument, and the Superior Court of Orange County was fully capable of reviewing the arbitrator's award. It is not at all unusual for a defendant to contend that damages sought by the plaintiff would confer a double recovery of damages previously awarded in another action. The mere presentation of such a contention certainly does not mean that the second decisionmaker is impinging upon the prior court's jurisdiction, or entitle the defendant to seek an injunction from that court. *See, e.g., Jos. L. Muscarelle, Inc. v. Cent. Iron Mfg. Co.*, 328 F.2d 791, 794 (3d Cir. 1964) (holding in-aid-of-jurisdiction exception to Anti-Injunction Act inapplicable because alleged risk of double liability "would not make the questioned injunction in aid of any jurisdiction which has been invoked and is being exercised in this suit").

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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